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 13 WARDELL STEPHEN CURRY II

14
UNITED STATES DISTRICT COURT
 15
NORTHERN DISTRICT OF CALIFORNIA
 16
SAN FRANCISCO DIVISION

17
 18 ATHALONZ, LLC

Case No. 3:23-mc-80324-LJC

19 Plaintiff,

20 v.
 21

**NON-PARTY WARDELL STEPHEN
 CURRY II'S RESPONSE TO
 PLAINTIFF'S NOTICE REGARDING
 STEPHEN CURRY SUBPOENA AND
 REQUEST FOR EXPEDITED RELIEF**

22
 23 UNDER ARMOUR, INC.

24 Defendant.

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1 The events Athalonz identified in its Motion do not support its arguments in its Motion
 2 for De Novo Review, and its request for expedited relief is unjustified. First, Athalonz has
 3 already identified both events in submissions to this Court. *See* Athalonz's Motion for Leave to
 4 File a Supplemental Brief (Dkt. 28), Statement of Recent Decision (Dkt. 35). And as Mr. Curry
 5 has explained, the evidence Under Armour produced in response to a recent interrogatory does
 6 not undercut any of Magistrate Judge Cisneros' findings in granting the Motion to Quash. *See*
 7 Opposition, Dkt. 31 at 1-4. Nor does the discovery order from Judge Gilstrap referenced in Dkt.
 8 35, which compels Under Armour to produce sponsored athletes' contracts and documents
 9 pertaining to their involvement in the design of the accused shoes. Nothing here changes the fact
 10 that all evidence supports Mr. Curry's lack of involvement with the alleged "athletic positioning"
 11 aspects of the accused shoes' soles. See Dkt. 31 at 2-3.

12 One recent event that *is* relevant is District Judge Ho's issuance of an Order granting
 13 non-party Bryce Harper's Motion to Quash a similarly-scoped subpoena in the Southern District
 14 of New York, as described in Dkt. 33. In direct support of Judge Cisneros' Order, Judge Ho
 15 found that Bryce Harper—a similarly-situated Under Armour sponsored athlete—lacked
 16 "relevant knowledge about the patent infringement dispute at issue," that Athalonz must first
 17 seek discovery from Under Armour, and "[e]ven if the Court were to find for Athalonz on
 18 relevance, Harper has successfully demonstrated that the Subpoena would be unduly
 19 burdensome." Dkt 33-1 at 6.

20 Athalonz's suggestions that Mr. Curry is "presumably available" for a deposition now is
 21 mistaken. Mr. Curry was recently selected to be part of the United States National Basketball
 22 Team and will be representing the United States at the 2024 Summer Olympic games in Paris,
 23 with extensive commitments that include travel, practice, appearances and games that extend
 24 through August 2024. In addition, Mr. Curry has ongoing endorsement, sponsorship and charity
 25 commitments, as explained in Mr. Curry's Motion to Quash. Dkt. 1 at 11. Even in the NBA
 26 offseason, the requested deposition of Mr. Curry is unduly burdensome, especially when
 27 weighed against the limited value of the information sought. *Id.* at 10-13; *see also Under*
 28 *Armour, Inc. v. Battle Fashions, Inc.*, No. 18-mc-80117-LB, 2018 U.S. Dist. LEXIS 130983

1 (granting motion to quash subpoena to Mr. Curry served during the NBA offseason).

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3 Dated: May 6, 2024

VENABLE LLP

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